IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 740 of 1999()

CC.398/1996 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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REVN. PETITIONER:

BINU CHERIAN, S/O.CHERIAN,
THAKKIRIKKAL VEETTIL,
CHELATTUKARA,
KOTHAMANGALAM.

BY ADV. SRI.T.A.SHAJI

RESPONDENTS:

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1. GOPALAKRISHNAN, S/O.GOVINDAN,
CHAYATTU HOUSE,
PADINJARE VENGOLA.

*ADDL.R2
STATE OF KERALA, (THE S.I.OF POLICE, KUNNATHUNAD),
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

(*)ADDL.RESPONDENT NO.2 IMPLEADED AS PER ORDER DATED 22/10/1999 IN CRL.M.P.NO.4013/1999.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI
SRI.M.RAJASEKHARAN NAYAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.No.740 of 1999(B)

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Dated this the 20th day of August, 2007

O R D E R

This revision petition is filed by the de facto complainant, who is the manager of the Cochin Granites, from the premises of which the accused allegedly committed theft of timber logs worth Rs.15,000/-, 200 rubber sheets, three bags of cement and scrap rubber.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 8, Exts.P1 to P4. The trial court acquitted the accused on the ground that it appeared that the accused was working as a Supervisor of the company and that in the absence of production of documents by the company, it cannot be held that the accused had committed any misappropriation and that in case the accused was working as a Supervisor, the offence alleged will only be misappropriation and not theft.

3. I find that PW.1, the Manager/de facto complainant has only testified that the accused was working as a Supervisor under the person to whom the crusher lying in the compound was rented out and that the accused used to be entrusted with the key of the store room wherein the rubber sheets etc. were kept and, he was also supervising the rubber estate of the company. It is the evidence of PWs.2 to 4, who are employed in the rubber estate that as per the direction of the accused, rubber sheets etc. were sold and the money handed over and, the timber logs were also loaded in the lorry and removed. The timber logs were recovered as per Ext.P2 mahazar allegedly as produced by the accused, as deposed to PW.8, the Investigating Officer. It is pointed out that the timber logs were not produced in the court.

4. It is the case of the defence that a case has been charge sheeted against the accused only to avoid paying him compensation as he has insisted that compensation has to be paid if he has to be terminated. I find that no details in this regard has been brought out in the cross-examination of PW.1.

Now, the counsel has contended that Industrial Dispute is pending. It appears to me that even if it is conceded that the accused was working as a Supervisor, if it is established that dishonest taking of movable property has been committed the offence of theft will be attracted.

In the circumstances, the finding of acquittal is set aside. The court below is directed to dispose of the matter afresh by a reasoned order and permitting the prosecution and the defence to recall the witnesses, if so required, untrammelled by any observations contained in this order. The matter will stand posted before the court below on 28/09/2007.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.740 of 1999(B)

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O R D E R

20th August, 2007